

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
 GMW Fire Protection, Inc., an Alaska)
 Corporation,)
 Plaintiff,)
 vs.)
 KANAG'IQ CONSTRUCTION CO.,)
 INC., an Alaska Corporation, and)
 WESTERN SURETY COMPANY, a)
 South Dakota Corporation,)
 Defendants.) Case No. A05-170 CI (TMB)

OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY FEES

Defendants, KANAG'IQ CONSTRUCTION CO., INC. and WESTERN SURETY COMPANY, by and through their counsel, Eide & Gingras, P.C., oppose Plaintiff's Motion for Attorney [sic] Fees in this matter. Defendants object to the motion in its entirety, on the grounds that attorney's fees are not available to Plaintiff in this case.

Attorney's fees and costs are not recoverable under the Miller Act unless there is a provision for such fees and costs in a valid contract or subcontract under the Act. See U.S. ex rel. Int'l Business Machines Corp. v. Hartford Fire Ins. Co., 112 F. Supp. 2d 1023, 1034 (D. Hawai'i 2000). More specifically, when a subcontractor's claims arise under the Miller Act, "Each party bears its own legal costs absent an enforceable contract provision or evidence that an opponent has acted 'in bad faith, vexatiously, wantonly, or

for oppressive reasons.”” United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788, 791 (9th Cir. 1989). GMW’s claims in this matter arise under the Miller Act, as stated in the Complaint. There is no contract provision allowing for legal costs, including attorney’s fees, in this case. There is no evidence that Defendants have acted “in bad faith, vexatiously, wantonly, or for oppressive reasons,” and GMW made no such claim against Defendants.

Attorney’s fees are not recoverable as a matter of state law either. The Miller Act provides a federal cause of action and the scope of the remedy is a matter of federal not state law. See F.D. Rich Co., Inc. V. U.S. ex rel. Industrial Lumber Co., Inc., 417 U.S. 116, 127 (1974). The Supreme Court stated that there is no evidence of congressional intent to incorporate state law to govern such an important element of Miller Act litigation as liability for attorney’s fees. Accordingly, Plaintiff is not entitled to attorney’s fees in this matter and its motion must be denied.

DATED at Anchorage, Alaska this 13th day of February 2008.

EIDE & GINGRAS, P.C.
Attorneys for Defendants
Kanag’Iq Construction Co., Inc. and
Western Surety Company

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CERTIFICATE OF SERVICE

1 I am a legal secretary employed by the law
2 firm of Eide & Gingras, P.C. That on this
3 13th day of February 2008, I served

4 [x] Electronically

5 a true and accurate copy of the foregoing
6 document upon the following counsel of record:

7 Sarah J. Tugman, Esq.
8 2509 Eide Street, Suite 4
9 Anchorage, AK 99503

10 EIDE & GINGRAS, P.C.

11 By /s/Donna Charter

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